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OFFICE OF PETITIONS

In re Application of :
Chun-Geun Choi : DECISION ON PETITION
Appl. No. 09/697,044 : UNDER 37 CFR 1.183
Filed October 27, 2000 :
Atty. Docket No. P56219RE :

This is a decision on petition filed under 37 CFR 1.47, 1.181 and 1.183 on October 27, 2000 which is properly treated under 37 CFR 1.183¹ requesting suspension or waiver of the regulations (presumably 37 CFR 1.172) that require the inventors to sign any supplemental declaration in a broadening reissue application.

Petitioner requests waiver of the rule (presumably §1.172) that requires that the inventor sign any supplemental declaration in a broadening reissue application.

The petition is granted.

BACKGROUND

1. U.S. Patent No. 5,828,834 issued to Chun-Geun Choi, on October 27, 1998.

2. A broadening reissue application (the present application) was filed for on October 27, 2000, and it was assigned application number 09/697,044.

¹If a joint inventor refuses or cannot be found or reached to sign a supplemental oath/declaration, a supplemental oath/declaration listing all the inventors, and signed by all the available inventors may be filed provided it is accompanied by a petition under 37 CFR 1.183 along with the petition fee, requesting waiver of the signature requirement of the nonsigning inventor. MPEP 1414.01

3. During the prosecution of the application, the Office required a supplemental reissue declaration directed to errors in the original patent which were corrected in the application after the signing of the original reissue declaration.

4. On October 24, 2005, applicant filed the present petition under 37 CFR 1.47 properly treated under 37 CFR 1.183 requesting suspension or waiver of the "regulations pertaining to the filing of a Supplemental Declaration under 37 C.F.R. § 1.175" that require a supplemental reissue declaration to be signed by the inventors.

5. The petition is accompanied by a "Supplemental Reissue Declaration," signed by Supplemental Reissue Application Declaration by the Assignee," signed October 21, 2005, by Kab-Tae Han, a duly authorized officer of the assignee (Samsung Electronics Company Ltd.). It is for this supplemental declaration that the petition requests acceptance, via suspension or waiver of the regulations.

6. The petition proffers a showing, including a statement of facts by Kab-Tae Han ,Senior manager of Intellectual Assets Group of assignee Samsung Electronics Company Ltd., to establish that the inventor Choi is unavailable to sign the supplemental reissue declaration. The petition and statement of facts, sets forth (a) the efforts made to contact each of the inventors and obtain their requisite signatures on the supplemental declaration, and (b) the lack of success of such efforts to obtain the signature of inventor Choi.

DECISION

35 U.S.C. 251, which is directed to reissue, does not address the signature requirements of a declaration in reissue. 37 CFR 1.172 requires that a reissue declaration be made (and signed) by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged. 37 CFR § 1.175(b)(1), requires that:

"For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant."

37 CFR 1.175(b)(1), taken in conjunction with § 1.172, requires a supplemental declaration to be signed by all inventors. This is because all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration. Thus, each oath and/or declaration must bear the appropriate signature of the inventor(s).

37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such waiver, and applicant has requested a waiver of the requirement that the 37 CFR 1.175(b)(1) supplemental declaration be signed by all of the inventor.

The instant petition is accompanied by an appropriate showing that inventor Choi is unavailable. Accordingly, the supplemental declaration, signed by five of the six inventors will be accepted as though it was signed by the inventor as required by 37 CFR 1.175(b)(1) taken in conjunction with § 1.172.

CONCLUSION

The present petition to waive 37 CFR 1.172 is granted. The petition fee for a petition filed under 37 CFR 1.183 is \$400.00. The Office is in receipt of \$200.00. Accordingly, deposit account no. 02-4943 will be charged the \$200.00 difference.

The application is being forwarded to Technology Center 2100 for further prosecution.

Please direct any questions related to this decision to the undersigned, at (571) 272-3215.



Charlema R. Grant
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Office of Petitions